**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 14550 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 16891 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 16893 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 16897 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 16898 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 18130 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 18212 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 18215 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 18217 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 18312 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 21988 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 21994 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 22460 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23313 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 23315 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23317 of 2007**
**To**
**SPECIAL CIVIL APPLICATION No. 23322 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23332 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23663 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23665 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23667 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23895 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23903 of 2007**
**With**
**SPECIAL CIVIL APPLICATION No. 23914 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**ATULKUMAR BHAGWATPRASAD BHATT - Petitioner(s)**
**Versus**
**THE STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR AG JOSHI for Petitioner(s) : 1,MR AM PAREKH for Petitioner(s) : 1,
MR SUNIT S SHAH, GP with MR KRUNAL PANDYA, AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 01/11/2007**

**CAV COMMON JUDGMENT** :

Rule in the matters in which it is not issued. Mr. Sunit Shah, Ld. GP and Mr. Krunal Pandya, Ld. AGP waive service of rule on behalf of respondents.

Since in all these petitions a common challenge to notification/resolution bearing no. GMC/12006-1548/C dated 22/5/2007 issued under the signature of the Joint Secretary, Health & Family Welfare Department, Government of Gujarat has been made, they are heard together and now they are being disposed of by this common CAV judgment.

2. The petitioners are practicing as Ayurvedic doctors in the State of Gujarat. According to them, they have obtained degree to practice as required under the Indian Medicine Central Council Act, 1970 [ 'IMCC Act' for short] and they have also obtained registration certificates issued by the medical institutions/board of the State of Bihar and in two cases of State of Madhya Pradesh, they are eligible to practice Indian medicine in the State of Gujarat. It is their say that they are doing lawful practice and respondent no. 1 cannot prevent them from practicing in the State of Gujarat. This averment has been made in view of the impugned notification which prescribes that the persons who have obtained recognition as medical practitioners from other States should compulsorily get themselves registered under the Gujarat Medical Council Act, 1967 [ 'GMC Act' for short], Gujarat Medical Practitioners Act, 1963 [ 'GMP Act' for short] and Gujarat Homeopathy Act, 1967, to practice in the State of Gujarat. It is their case that the registration obtained by them from their respective medical institutions is valid for all purposes and they are entitled to practice Indian medicine in the State of Gujarat. According to them, the impugned notification is violative of Article 14 of the Constitution in as

much as it is discriminatory and arbitrary. It is averred that just as an advocate who is enrolled in a particular State, can also practice in other States, the petitioners who have obtained registration from other States can practice in the State of Gujarat. They have placed reliance on the provisions of section 17 of the IMCC Act. On the aforesaid premises, the petitioners have prayed that this Court may quash and set aside the impugned notification by issuing appropriate writ or direction.

3. The respondents have vehemently contested the petitions by filing affidavit-in-reply. Mr. SK Jadav, Dy. Secretary, Health & Family Welfare Department has filed the affidavit denying the averments made in the petitions. It is averred that after the introduction of IMCC Act and in particular the enforcement of provisions of section 17 thereof, only those persons who possessed any of the recognized qualifications under schedules to the IMCC Act, are eligible to be enrolled/registered on the State Register. According to him, the petitioners do not possess the recognized qualification under the IMCC Act and they cannot be registered in the State of Gujarat. It is averred that the petitioners have obtained registration from other States and such registration is not recognized by the State of Gujarat and, therefore, there is no question of enrolling them on the register of GMP Act. It is further averred that by virtue of section 30 of the GMP Act the petitioners practice in the State of Gujarat is illegal and they are liable to be prosecuted. It is averred that in similar petitions this Court has taken the view that the Ayurvedic Doctors who have obtained

registration from other States and who do not possess the recognized qualification under the IMCC Act cannot practice in the State of Gujarat. It is the say of the respondents that the petitioners can practice only in the States in which they are registered as medical practitioners and not outside these States. According to the respondents, the State is empowered and authorized to issue the impugned notification prohibiting such practitioners from practicing in the State of Gujarat. On these averments, the respondents have prayed for the dismissal of the petitions.

4. I have extensively heard Mr. AM Parekh, learned advocate for the petitioners in all the petitions and Mr. Sunit S Shah, Ld. GP appearing with Mr. Krunal Pandya, Ld. AGP for the respondents. I have also carefully perused the record of the petitions. Mr. Parekh has submitted that the impugned notification has been issued by the respondents without any lawful authority. He has submitted that the certificates issued by the medical institutions of the petitioners are valid and permit them to practice in any State of the country. He has placed reliance on the provisions of section 17 of the IMCC Act. According to Mr. Parekh, there is no legal provision which empowers the respondents to issue impugned notification. According to him, it is merely in the form of administrative instruction which has no statutory force. He has submitted that the petitioners are duly qualified Ayurvedic Doctors and they stand on the same footing as Ayurvedic Doctors who have obtained the recognition from the medical institutions named in the schedules referred to in section 17. However,

the impugned notification makes hostile discrimination and hence it is violative of Article 14. Mr. Parekh has placed heavy reliance on the decision rendered by the Apex Court in the case of Dr. Mukhtiar Chand v/s. State of Punjab reported in AIR 1999 S.C. 468 and also on the decision rendered by the Apex Court in the case of Subhashish Baxi v/s. West Bengal Medical Council reported in (2003) 9 S.C.C. 269.

4.1. As against that, Mr. Sunit Shah, Ld. GP has submitted that there is nothing on record to show that the petitioners hold degree which is recognized under the IMCC Act. He has submitted that the medical institutions which have issued certificates in favour of the petitioners are not recognized under the IMCC Act nor they have moved the Central Government under section 14 (2) of the IMCC Act to obtain recognition. Hence, on the basis of such certificates the petitioners cannot practice in the State of Gujarat. In other words, according to him, the petitioners can only practice in the State wherein such medical institution is situated and not outside it. According to Mr. Shah, the petitioners are neither entitled to have registration under the IMCC Act nor under the GMP Act and, therefore, they cannot be allowed to practice in Gujarat. He has submitted that section 17 of the IMCC Act provides that person who does not possess recognized medical qualification and who is not enrolled on a State register or the Central register of Indian Medicine, cannot practice Indian medicine in any State. According to him, the petitioners do not fall in the categories contained in the Schedule to the IMCC Act or under section 30

of the GMP Act. They, therefore, cannot be enrolled on the State register. He has submitted that the decisions cited by Mr. Parekh do not apply to the facts of the present case. He has, therefore, submitted that the petitions be dismissed. He has also placed reliance on decisions rendered by the learned Single Judge of this Court.

5. I have carefully considered the rival submissions. There is no dispute that all the petitioners except the petitioner of S.C.A. No. 14550 of 2007, possessed registration of State of Bihar. Majority of them do not possess any qualification, but they have received registration on the basis of their experience. They have been registered as Vaidya. There is also no dispute that the medical institution/council/board which have granted registration and issued certificate, are not covered under Schedules 2, 3 and 4 of the IMCC Act or under the categories mentioned in Part-I of the Schedule of GMP Act. The question that is required to be decided is whether irrespective of the fact that the petitioners are not registered either under the IMCC Act or under the GMP Act on the basis of certificates issued by their respective medical institutions, can be permitted to practice in the State of Gujarat. For this purpose it is necessary to refer to certain relevant provisions of the IMCC Act. The preamble of the IMCC Act reads as under :-

> "An Act to provide for the constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith."

It shows that the Act has been enacted for three purposes, namely (i) to provide for constitution of Central Council of Indian Medicine, (2) the maintenance of the Central Register of Indian Medicine and (3) to deal with matters connected therewith. Section 2 provides for definitions. Section 2 (1)(c) *"Central Council"*. It means the Central Council of Indian Medicine constituted under section 3. Section 2(1)(d) defines *"Central Register of Indian Medicine"*. It means the register maintained by the Central Council under this Act. Section 2(1)(e) defines *"Indian medicine"* means the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. Section 2(1)(f) defines *"medicial institution"*. It means any institution within or without India which grants degrees, diplomas or licences in Indian medicine. Section 2(1)(h) defines *"recognised medical qualification"*. It means any of the medical qualifications, including post-graduate medical qualification, of Indian medicine included in the Second, Third or Fourth Schedule. Section 2(1)(j) defines *"State Register of Indian Medicine"*. It means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine. Chapter III of the IMCC Act deals with recognition of medical qualifications. Section 14 prescribes the recognition of medical qualifications granted by certain medical institutions in India. It reads as under :-

> "14. (1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.
>
> (2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

Section 16 of the IMCC Act deals with recognition of medical qualifications granted by the medical institutions in countries with which there is a scheme of reciprocity. Section 17 of the IMCC Act deals with rights of persons possessing qualifications included in Second, Third or Fourth Schedule for enrollment.

> "17. (1) Subject to the other provisions contained in this Act any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register or Indian Medicine.
>
> (2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian

Medicine,-

(a) xxx xxx xxx xxx

(b) shall practise Indian medicine in any State;

(c ) xxx xxx xxx xxx

(d) xxx xxx xxx xxx

(3) Nothing contained in sub-section (2) shall affect,-

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practice Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) to (d) xxx xxx xxx xxx,

(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Chapter IV of the IMCC Act deals with the Central Register of Indian Medicine. Sub-section (1) of section 23 reads as under :-

"23. (1) The Central Council shall cause to be maintained in the prescribed manner, a register of practitioners in separate parts for each of the system of Indian medicine to be known as the Central Register of Indian Medicine which shall contain the names of all persons who are for the time being enrolled on any State Register of Indian Medicine and who possess any of the recognised medical qualifications."

Section 29 confers certain privileges on persons who are enrolled on the Central Register of Indian Medicine and they are entitled to practice Indian medicine in

any part of India and to recover expenses, charges in respect of medicaments or other appliances or any fees to which he may be entitled. Second Schedule to the IMCC Act provides the list of recognized medical qualifications in Indian medicine granted by universities, board of other medical institutions in India. The qualifications recognized under the First Schedule and Fourth Schedule are not relevant for the purpose of these petitions. I have been provided with the list of medical qualifications included in the schedules to the IMCC Act which is corrected upto March 2007. I reproduce the relevant portion thereof :-

| Name of University, Board or medical institutions. | Recognised medical | Abbreviation for registration | Remarks |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| **BIHAR :** | | | |
| 6. State Faculty of Ayurvedic and Unani Medicines, Patna, Bihar. | Graduate in Ayurvedic Medicine and Surgery | G.A.M.S. | From 1953 onwards |
| 7. Government Ayu--vedic School, Patna, Bihar [Former] | Ayurvedacharya | " | " |
| 8. Government Ayu--vedic College, Patna, Bihar. | Ayurvedacharya | " | " |
| 9. Kameshwar Singh | Pranacharya | [B.A.M.S.] | From 1962 |

| | | | | |
|---|---|---|---|---|
| | Darbhanga Sanskrit University, Darbhanga. | Ayurvedacharya [Bachelor of Ayurvedic Medicine & Surgery, | B.A.M.S | onwards. From 1981 onwards |
| | | [Ayurvedacharya | " | From 1962 to 1979] |
| [9A. | University of Bihar, Muzaffar--pur. | Graduate in Ayurvedic Medicine and Surgery, | G.A.M.S. | From 1973 to 1981] |
| | | [Ayurvedacharya (Bache--lor of Ayurvedic Medicine and Surgery). | B.A.M.S. | From 1981 onwards]. |

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As in only two cases the certificates are issued by the medical institutions in favour of the petitioner of S.C.A. No. 14550/2007 situated in Madhya Pradesh. The list of Madya Pradesh is not reproduced here since it is very long, but I have carefully checked the same and the institutions in question are not covered in Second Schedule.

6. As already stated above, the petitioners do not dispute the fact that their medical institutions are not covered under Schedule 2, but their say is that it is a recognized qualification and they are entitled to be registered on the State Register of Gujarat and they can practice in the State of Gujarat. The claim of the petitioners cannot be accepted because sub-section (1) of section 17 of the IMCC Act provides that any medical qualification included in Second, Third or Fourth Schedule shall be sufficient qualification for enrollment on any State Register of Indian Medicine. Sub-section (1) of section

14 states that only the medical qualification granted by any university/board or any other medical institution in India which is included in Second Schedule shall be recognized medical qualification for the purpose of the IMCC Act. The petitioners are granted medical qualification by the medical institutions which are not covered under Second Schedule. Therefore, they cannot be enrolled on the State Register of Indian Medicine and as per sub-section (2) of section 17 unless the person possessed the recognized medical qualification and who is enrolled on State Register or Central Register of Indian Medicine, he cannot practice Indian medicine in any State. The petitioners do not claim any exception under sub-section (3) of section 17. Thus, it is obvious that the provisions of clause (b) of sub-section (2) of section 17 put restriction on their practicing Indian medicine in any State. The petitioners have not shown that in accordance with which provision of the IMCC Act they are entitled to practice in the States other than Bihar or Madhya Pradesh. Mr. Parekh has, of-course, placed reliance on section 17 sub-section (2) clause (b) to contend that they are entitled to practice in any State, but the reliance is hopelessly misplaced. If the said clause is read in the context of earlier provision and in particular sub-section (2), it clearly shows that the petitioners are prohibited by this very provision from practicing in any State. May be that in the States of Bihar or Madhya Pradesh, as the case may be, they can practice Indian medicine, but they cannot in other States. This submission of Mr. Parekh, therefore, cannot be accepted.

6.1. According to Mr. Parekh, respondent no. 1 has no power or authority to issue the impugned notification, since there is no statutory provision empowering respondent to put restriction on the practice of the petitioners. So far as the State of Gujarat is concerned, there are two enactments relating to medical practitioners, one is GMC Act and the other is GMP Act. So far as the GMC Act is concerned, it is enacted for consolidating and amending the law regulating the registration of persons practicing modern scientific medicine in the State of Gujarat. This Act is only applicable to the medical practitioners or practitioners as defined in section 2 clause (b). It specifically excludes the persons engaged in the practice of Ayurvedic medicine and surgery or Ayurvedic, Unani or Homeopathy system of medicine. Thus, the Ayurvedic medical practitioners have been kept out of the purview of this Act. So far as the GMP Act is concerned, it is enacted to consolidate and amend the law regulating the qualifications and providing for registration of practitioners of the Ayurvedic and Unani systems of medicine and make certain provisions regulating medical practitioners generally practicing in the State of Gujarat. Thus, this Act is specially enacted for the persons practicing in Ayurvedic system of medicine, Homeopathy and Unani system of medicine. Clause (p) of sub-section (1) of section 2 defines *"Register"*. It means the register of practitioners prepared and maintained under section 17. Chapter III of the GMP Act deals with Registration and Enlistment. The relevant provisions of this section are reproduced as under :-

> "17. (1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a register of Ayurvedic and Unani practitioners for the State, in accordance with the provisions of this Act.
>
> (2) The register shall be in the prescribed form and there shall be one register consisting of two parts. Part I shall include the names of registered practitioners possessing any of the recognised qualifications and Part II shall include the names of registered practitioners other than those included in Part I.

Chapter V of GMP Act deals with general provisions applicable to all medical practitioners. The relevant provisions of section 30 are required to be reproduced :-

> "30. (1) Save as otherwise expressly provided in any special law for the time being in force, no person other than a medical practitioner whose name is entered in-
>
> (i) the register or the list maintained under this Act;
>
> (ii) & (iii) xxx xxx xxx
>
> (iv) the Indian medical Register prepared and maintained under the Indian Medical Council Act, 1956,
>
> shall practice any system of medicine in the State :
>
> Provided that, the State Government may, by notification in the Official Gazette, direct that, subject to such conditions as it may deem fit to impose and the payment of sch fees as may be prescribed, the provisions of this section shall not apply to any class of persons, or to any area, as may be specified in such notification."

Sub-section (2) of section 30 provides for the punishment for contravention of

provisions of sub-section (1) of section 30. Section 34 of the GMP Act gives liberty to a person to practice in rural areas under certain circumstances. Section 37 of Chapter VI empowers the State Government to frame rules for carrying out the purposes of the GMP Act. The Schedule to the GMP Act is divided into four parts. It prescribes the qualification, possession of which entitles a person to registration. Part-A deals with qualification in the Ayurvedic system of medicine, Suddha, Ayurvedic Courses. Part-B deals with qualifications in the Unani system of Medicine. Part-C deals with qualifications in the Ayurvedic system of medicine with a course supplemented by modern advances with (a) the Inter Science (B Group) examination as qualification for admission, or (b) the Matriculation or S.S.C. Examination or its equivalent examination as qualification for admission, provided the course is of a duration of six or more years. Part-D contains qualifications in the Ayurvedic system of medicine with course supplemented by modern advances with the Matriculation or S.S.C. Examination or its equivalent Examination as qualification for admission. The Schedule contains the table prescribing the granting authority, qualification and the abbreviations for registration and conditions for registration, if any. I have perused all the parts of the Schedule carefully. The petitioners' granting authority and the qualifications possessed by them are not included in this Schedule. The State Register which is required to be maintained in accordance with sub-section (2) of section 17 contains two parts. Part-I is to include the names of registered practitioners possessing any of the

recognized qualifications and Part-II is to include the names of registered practitioners other than those included in Part-I. Sub-section (3) of section 17 provides that every person who possesses any of the qualifications specified in the Schedule shall, at any time on an application made in the prescribed form, be entitled to have his name registered in the register. Obviously the petitioners when they are not covered under the Schedules to GMP Act, cannot be said to have possessed the recognized medical qualification under the GMP Act also and they cannot be registered as practitioners possessing any of the recognized qualifications. The conjoint reading of section 17 (1) of the IMCC Act and section 17 (2) and (3) of the GMP Act will show that only those persons who possess medical qualifications included in the Schedules to the Acts can be enrolled on the State Register and in accordance with sub-section (2) of section 17 no person other than the practitioner of Indian medicine who possesses the recognized medical qualification and is enrolled on State Register or the Central Register of Indian medicine can practice Indian medicine in any State. The petitioners have not been able to convince me that because they are registered in the States of Bihar and M.P., they are ipso-facto entitled to get registration under the GMP Act. Like provision of sub-section (2) of section 17 of the IMCC Act, section 30 of the GMP Act also imposes prohibition on medical practice by persons not registered or enlisted. It provides that no person other than medical practitioner whose name is entered in the register or list maintained under the GMP Act or under the Indian Medical Register prepared

and maintained under the IMCC Act, shall practice any system of medicine in the State. The contravention thereof is made punishable under sub-section (2). Thus, when the petitioners are not enrolled in the Central Register or the State Register, they cannot practice in the State of Gujarat only on the basis of certificate issued by the unrecognized medical institutions of Bihar State or Madhya Pradesh State, as the case may be.

7. It may be noted here that the Government of Gujarat was faced with the problem of qualification to apply for registration since quite sometime and, therefore, the Board of Ayurvedic and Unani System of Medicine, Gujarat State, addressed a letter dated 12/12/2005 to the Secretary, Central Council of Indian Medicine in institutional area, Janakpuri, New Delhi, seeking advice from the Secretary and it received advice from the Central Council by letter dated 1/1/2006. The Board was advised that only those persons can be held to be qualified for the registration for practicing Indian medicine who possessed a recognized medical qualification included in 2nd, 3rd and 4th Schedules of IMCC Act, which is a Central Act and it was further informed that under the said Act there was neither provisions for enlistment on the basis of experience nor transfer of registration from one State to another. The Board was further advised that after enforcement of provisions of section 17 of the IMCC Act with effect from 1/9/1976 only those persons who are possessing medical qualification included in Schedules of the IMCC Act in accordance with section 17(4) can be enrolled or registered on the State Register or Indian Medicine. It

appears that earlier also similar advice was received and on the basis of the same, the impugned notification has been issued. The advice appears to be completely in consonance with the legal provisions referred to above. Thus, it is clear that in accordance with section 17 of the IMCC Act, unless a person is enrolled on State Register or Central Register in accordance with the provisions of section 17 read with relevant Schedule, he cannot be allowed to practice Indian Medicine in any State. The petitioners have failed to establish that they stand covered under the provisions of section 17 of the IMCC Act and, therefore, they are entitled to be registered under the GMC Act and can be allowed to be practiced in the State of Gujarat.

8. Mr. Parekh has placed extensive reliance on the decision rendered by the Apex Court in the case of Dr. Mukhtiar Chand v/s. The State of Punjab [supra]. I have closely perused the same. The said judgment is delivered in different context and in relation to the provisions of the Drugs and Cosmetics Act. The questions of general importance and practical significance that arose before the Apex Court have been stated in para. 1 of the judgment. They are as under :-

> "1. These cases raise questions of general importance and practical significance – questions relating not only to the right to practise, medical profession but also to be right t life which includes health and well-being of a person. The controversy in these cases was triggered off by the insurance of declarations by the State Government under Clause (iii) of

Rule 2 (ee) of the Drugs and Cosmetic Rules, 1945 (for short "the Drugs Rules") which defines "Registered Medical Practitioner". Under such declarations, notified Vaids/Hakims claim right to prescribe Allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940 (for short "the Drugs Act"). Furthermore, Vaids/Hakims who have obtained degrees in integrated courses claim right to practise allopathic system of medicine."

Further the question is as it appears in para. 16, what is the impact of the Indian Medical Council Act, 1956 and IMCC Act, 1970 on rule 2(ee) (iii) of the Drugs Rules and the notifications issued thereunder and whether the persons who have qualified the integrated courses in Ayurveda and Unani from various universities are entitled to practise in and prescribe allopathic medicines. In para. 38 it has observed as under :-

"38. For the present discussion, the germane provision in Section 15(2) (b) of the 1956 Act which prohibits all persons from practising modern scientific medicine in all its branches in any State except a medical practitioner enrolled on a State Medical Register . There are two types of registration as for the State Medical Register is concerned. The first is under Section 25, provisional registration for the purposes of training in the approved institution and the second is registration under Section 15(1). The third category of registration is in the "Indian Medical Register" which the Council is enjoined to maintain under Section 21 for which recognised medical qualification is a pre-requisite. The privileges of persons who are enrolled on the Indian Medical Register are mentioned in Section 27 and include right to practice as medical practitioner in any part of India. "State Medical Register ", in contradiction to "Indian Medical Register" is maintained by the State

> Medical Council which is not constituted under 1956 Act but is constituted under any law for the time being in force in any State; as also a State Medical Register is maintained not under 1956 Act but under any law for the time being in force in any State regulating the registration of practitioners of medicine. It is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualification other than the 'recognised medical qualification" which is a pre-requisite only for being enrolled on Indian Medical Register but not for registration in a State Medical Register. Even under the 1956 Act, "recognised medical qualification" is sufficient for that purpose. That does not mean that it is indispensably essential. Persons holding 'recognised medical qualification' cannot be denied registration in any State Medical Register. But the same cannot be insisted upon for registration on a State Medical Register. However, a person registered in a State Medical Register cannot be enrolled on Indian Medical Register unless he possesses 'recognised medical qualification'. This follows from a combined reading of Section 15(1), 21(1) and 23. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person shall be entitled to practise allopathic medicine under Section 15(2) (b) of the1956 Act."

Obviously the institutions from which the petitioners have received the certificates are not recognized institutions in accordance with the provisions of IMCC Act and the petitioners do not possess recognized medical qualification and, therefore, they are not entitled to be enrolled on State Medical Register or enrolled on IMCC Register. This judgment, therefore, will not render any help to the petitioners. The second decision relied on by Mr. Parekh is rendered by the Apex Court in the case of Subhasis Bakshi v/s. W.B.

Medical Council [supra]. I have closely perused the decision. It is not at all relevant for the purpose of deciding the present issue on hand. Hence it is not required to be discussed here.

In the result, these petitions have no merits and they are dismissed. Rule discharged with no order as to costs.

* * *

Request for stay is made by Mr. Parekh. Considering the facts and circumstances of the case, request is rejected.

[ Akshay H Mehta, J. ]

* Pansala.